

# STATE OF MONTANA TERM CONTRACT

Department of Administration  
State Procurement Bureau  
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Helena, MT 59620-0135  
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<http://www.discoveringmontana.com/doa/gsd>

**T.C. #: SPB04-902D**  
**PHOTOGRAPHIC SUPPLIES**  
**This is an exclusive contract.**

CONTRACT TERM	FROM	APRIL 1, 2005	CONTRACT STATUS	NEW ( )
	TO	MARCH 31, 2006		RENEW (xx) This is the 1 <sup>st</sup> renewal, 2 <sup>nd</sup> year of the contract.
VENDOR ADDRESS	SEE PAGE 5		ORDER ADDRESS	
ATTN:			ATTN:	
PHONE:			PHONE:	
FAX:			FAX:	
E-MAIL:			E-MAIL:	

PRICES: PERCENT OFF MANUFACTURER'S LIST

DELIVERY: TWO (2) WORKING DAYS (UNLESS OTHERWISE SPECIFIED)

F.O.B.: AGENCY DESTINATION

TERMS: NET 30 DAYS

REMARKS:

IFB/RFP No.:  
SPB04-902D

RHONDA R. GRANDY, CONTRACTS OFFICER

DATE:

**AUTHORIZED SIGNATURE**

## Standard Terms and Conditions

**By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, the vendor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation or contract.**

**ACCEPTANCE/REJECTION OF BIDS, PROPOSALS, OR LIMITED SOLICITATION RESPONSES:** The State reserves the right to accept or reject any or all bids, proposals, or limited solicitation responses, wholly or in part, and to make awards in any manner deemed in the best interest of the State. Bids, proposals, and limited solicitation responses will be firm for 30 days, unless Stated otherwise in the text of the invitation for bid, request for proposal, or limited solicitation.

**ACCESS AND RETENTION OF RECORDS:** The vendor agrees to provide the department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance (Mont. Code Ann. § 18-1-118). The vendor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

**ALTERATION OF SOLICITATION DOCUMENT:** In the event of inconsistencies or contradictions between language contained in the State's solicitation document and a vendor's response, the language contained in the State's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.

**ASSIGNMENT, TRANSFER AND SUBCONTRACTING:** The vendor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Mont. Code Ann. § 18-4-141.)

**AUTHORITY:** The following bid, request for proposal, limited solicitation, or contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

**COMPLIANCE WITH LAWS:** The vendor must, in performance of work under the contract, fully comply with all applicable federal, State, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the vendor subjects subvendors to the same provision. In accordance with section 49-3-207, MCA, the vendor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

**CONFORMANCE WITH CONTRACT:** No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without prior written consent of the State Procurement Bureau. Supplies delivered which do not conform to the contract terms, conditions, and specifications may be rejected and returned at the vendor's expense.

**DEBARMENT:** The vendor certifies, by submitting this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the vendor cannot certify this Statement, attach a written explanation for review by the State.

**DISABILITY ACCOMMODATIONS:** The State of Montana does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals, who need aids, alternative document formats, or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

**FACSIMILE RESPONSES:** Facsimile responses will be accepted for invitations for bids, small purchases or limited solicitations ONLY if they are completely received by the State Procurement Bureau prior to the time set for receipt. Bids, or portions thereof, received after the due time will not be considered. Facsimile responses to requests for proposals are ONLY accepted on an exception basis with prior approval of the procurement officer.

**FAILURE TO HONOR BID/PROPOSAL:** If a bidder/offeror to whom a contract is awarded refuses to accept the award (PO/contract) or, fails to deliver in accordance with the contract terms and conditions, the department may, in its discretion, suspend the bidder/offeror for a period of time from entering into any contracts with the State of Montana.

**FORCE MAJEURE:** Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

**HOLD HARMLESS/INDEMNIFICATION:** The vendor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the vendor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the vendor and/or its agents, employees, representatives, assigns, subvendors, except the sole negligence of the State, under this agreement.

**LATE BIDS AND PROPOSALS:** Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to assure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

**PAYMENT TERM:** All payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the State is allowed 30 days to pay such invoices. All vendors may be required to provide banking information at the time of contract execution in order to facilitate State electronic funds transfer payments.

**RECIPROCAL PREFERENCE:** The State of Montana applies a reciprocal preference against a vendor submitting a bid from a State or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for nonconstruction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved. For a list of States that grant resident preference, see <http://www.discoveringmontana.com/doa/gsd/css/Resources/ReciprocalPreference.asp>.

**REFERENCE TO CONTRACT:** The contract or purchase order number MUST appear on all invoices, packing lists, packages and correspondence pertaining to the contract.

**REGISTRATION WITH THE SECRETARY OF STATE:** Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another State or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain

registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://www.sos.State.mt.us>.

**SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

**SHIPPING:** Supplies shall be shipped prepaid, F.O.B. Destination, unless the contract specifies otherwise.

**SOLICITATION DOCUMENT EXAMINATION:** Vendors shall promptly notify the State of any ambiguity, inconsistency, or error, which they may discover upon examination of a solicitation document.

**TAX EXEMPTION:** The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

**TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED:** Vendor acknowledges that no State funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (Mont. Code Ann. § 18-5-603.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

**TERMINATION OF CONTRACT:** Unless otherwise Stated, the State may, by written notice to the vendor, terminate the contract in whole or in part at any time the vendor fails to perform the contract.

**UNAVAILABILITY OF FUNDING:** The contracting agency, at its sole discretion, may terminate or reduce the scope of the contract if available funding is reduced for any reason. (Mont. Code Ann. § 18-4-313 (3).)

**U.S. FUNDS:** All prices and payments must be in U.S. dollars.

**VENUE:** This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Mont. Code Ann. § 18-1-401.)

**WARRANTIES:** The vendor warrants that items offered will conform to the specifications requested, to be fit and sufficient for the purpose manufactured, of good material and workmanship and free from defect. Items offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the State. They shall be equal in quality and performance to those indicated herein. Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance and/or use desired. Exceptions will be rejected.

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Revised 11/03

**CONTRACTOR'S PROFILE**

B & H Photo Video Pro-Audio  
Yebuda Fogel – Bid Officer  
420 Ninth Ave  
New York NY 10001  
Phone: (212) 444-5000 ext 2050  
Fax: (212) 239-7740

HPI International Inc  
Amy Berger  
186 21<sup>st</sup> St  
Brooklyn NY 11232-1302  
Phone: (718) 768-8800  
Fax: (718) 768-0743

### **1.0 SCOPE**

The State of Montana is contracting with multiple contractors to provide photographic supplies for all State agencies for the period of April 1, 2005 through March 31, 2006. The initial contract period was from February 16, 2004 through March 31, 2005. This is the first renewal, second year of the contract.

Bids were accepted only from businesses that are authorized representatives of the companies whose products were bid. It was the intention of the State to contract with a maximum of five (5) responsible and responsive contractors who provided the lowest discounted price.

### **2.0 CONTRACT TERM**

This contract shall take effect on April 1, 2005, and terminate on March 31, 2006, unless terminated earlier in accordance with the terms of this contract. (Mont. Code Ann. § 18-4-313.)

#### **2.1 CONTRACT RENEWAL**

This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be renewed in one (1) year intervals, or any interval that is advantageous to the State, for a period not to exceed a total of seven (7) years.

#### **2.2 CONTRACT TERMINATION**

Termination for Cause. The State may, by written notice to the contractor, terminate this contract in whole or in part at any time the vendor fails to perform this contract.

#### **2.3 EXCLUSIVE CONTRACT**

The intent of this contract is to provide State agencies with an expedited means of procuring supplies and/or services. This contract is considered to be an "Exclusive" use contract and State agencies must obtain the specified product/service from the contract holder(s), unless the contract allows otherwise. However, the State Procurement Bureau does not guarantee any minimum usage totals and it is the individual agency's responsibility to comply with the terms of the contract.

#### **2.4 COOPERATIVE PURCHASING**

Under Montana law, public procurement units, as defined in section 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Public procurement units are defined as local or State public procurement units of this or any other State, including an agency of the United States, or a tribal procurement unit. Unless the bidder/offeror objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these public procurement units.

### 2.5 PROCUREMENT CARD

The State of Montana has implemented a Procurement Card (GE MasterCard) Program to give agencies the ability to charge purchases made from these contracts. The State of Montana prefers this method of payment.

### 3.0 CONTRACT REQUIREMENTS

- 3.1 Contractors must furnish copies of manufacturer's catalogs and price lists to each requesting agency without charge.
- 3.2 Discounts must remain firm for the initial contract period. Contractors may submit new pricing schedules no later than forty-five (45) days prior to contract renewal. Late requests will not be considered. If unable to reach mutually acceptable pricing, the contract will be resolicited.
- 3.3 Contractors will be required to establish separate accounts for all authorized ordering agencies.
- 3.4 Contractors may not make substitutions for items without prior written consent of the agency.
- 3.5 Payment will be made thirty (30) days after receipt of a properly executed invoice, or after satisfactory completion of the entire order, whichever is later.

### 4.0 TERM CONTRACT REPORTING

Term contract holder(s) shall furnish annual reports of term contract usage. Each report shall contain the product description, total quantity sold of each item, total dollars expended, and the name of the agency purchasing the item. The first report for this term contract was due on July 15, 2004 and July 15th of each renewal year thereafter.

Reported volumes and dollar totals may be checked by the State Procurement Bureau against State records for verification. Failure to provide timely or accurate reports is justification for cancellation of the contract and/or justification for removal from consideration for award of contracts by the State. Failure to provide timely, accurate reports is justification for cancellation of the contract and/or removal of the contract holder's name from the State's vendor list of responsible vendors.

### 5.0 PRODUCT REQUIREMENTS

- 5.1 Products furnished under this contract must be of current manufacture and guaranteed to perform to manufacturer's specifications. Inferior and/or defective products will be rejected, returned and replaced at the contractor's expense. Sale of gray market products will result in immediate contract cancellation and report of the incident to appropriate authorities. All products must carry valid USA warranty.
- 5.2 Products with a shelf-life must be date stamped. Dated products must have a minimum average or normal shelf-life expectancy of one (1) year. Products received after expiration date will be returned at the contractor's expense for a full refund.

## PHOTOGRAPHIC SUPPLIES

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5.3 Sufficient inventory of stock to supply the needs of State agencies must be maintained. Continual back order of normal stock items will result in removal of the contractor from this term contract.

5.4 If demand or increased usage warrants that additional items be added to the list of "standard stock" items, the State will attempt to negotiate a mutually agreeable price with vendors who are able to supply the product(s).

### 6.0 ORDERING/SHIPPING PROCEDURES

6.1 Authorized agencies will place orders on an "as needed" basis by memo, fax or agency purchase order, referencing the term contract number. Verbal orders may be placed during normal working hours and confirmed in writing. Contractors must have toll-free telephone numbers.

6.2 Standard stock items must be shipped within twenty-four (24) hours of order placement, with delivery to be complete within two (2) working days. Items considered non-stock must be delivered within ten calendar days of order placement.

6.3 Items that are undeliverable within the twenty-four (24) hour time frame are to be cancelled. Contractors must provide the ordering agency immediate notice, **BY TELEPHONE**, of product(s) unavailability, upon which notice the agency may independently procure the items.

6.4 Contractors will reference the term contract number on all invoices, packing lists, correspondence and packages.

6.5 The minimum order for prepaid shipment to agencies throughout the State of Montana is \$50.00. The minimum order requirement includes any combination of stock and non-stock items and back orders shipped at a later time, excluding fixer and paper.

6.6 Orders less than \$100 may be shipped via the best and least expensive way, within the required delivery times. No additional charges for packaging, drayage, handling or any other purposes is allowed.

6.7 Charges for agency requested express delivery (i.e. next day, overnight, etc.) will be prepaid, documented and added to the invoice as a separate line item.

6.8 C.O.D. shipments will not be accepted.

6.9 The contractor may include the fee charged by UPS for each hazardous package requiring U.S. Department of Transportation shipping papers. Charge must be listed on the invoice as a separate line item with supporting documentation from UPS. This charge is filed for both interstate and intrastate hazardous material shipments, including commodities classified as ORM-E. It does not apply to ORM classes A, B, C or D.



## PHOTOGRAPHIC SUPPLIES

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### 7.0 AGENCY RESPONSIBILITIES

- 7.1 This term contract grants the State of Montana agencies an exclusive right and obligation to purchase the photographic supply items listed within for the contract period. Agencies who feel they can obtain a better price elsewhere are required to obtain prior permission from the State Procurement Bureau.
- 7.2 **EXCEPTION.** Although included in contract pricing, agencies **are not obligated** to procure REGULAR AMATEUR FILM from this contract.
- 7.3 State agencies are expected to follow accepted receiving procedures, including immediate vendor notification in the event shipping problems occur.
- 7.4 Agencies are required to notify the State Procurement Bureau in writing, of any ongoing vendor and/or product problems.

### 8.0 LINE ITEMS

Five (5) vendors operating as authorized manufacturer's representatives were added to the initial contract or whichever was in the best interest of the State. Basis for contract pricing is the percentage of discount off manufacturer's current list price. Focus Camera Inc of Brooklyn, New York and Valley Litho Supply of Rice Lake, Wisconsin chose not to renew this contract for an additional year per the terms and conditions stated in the original contract.

### 9.0 STANDARD STOCK ITEMS

#### 9.1 Eastman Kodak Products

##### A. Films

- Kodacolor Gold, 12, 24 and 36 exp.  
ASA-100/200/400
- Ektachrome Color Film, 35mm and 120 size
- ASA-100/200/400/1600 Tungsten
- Ektachrome 50 and 64
- Royal Gold 25 and 1000
- Kodachrome 64 Film
- Black and White Films, 35mm and 120, ASA-100/400/3200
- Tri-X
- Plus-X, 24 and 36 exp.
- T-Max
- 100' Bulk Roll Film
  - Vericolor Slide Film
  - Ektachrome EPY 50 Tungsten
  - Ektachrome 100 Daylight
  - Ektachrome Slide Duplicating Film 5071
  - Tri-X Pan Film TX402
  - Ortho Kodalith 35mm

## PHOTOGRAPHIC SUPPLIES

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- Plus-X Pan Film PX402
- T-Max 100 TMX402
- T-Max 400 TMY402
- Vericolor SO-279 35mm Slide Film
- Ektapress Color Negative Film
- Technical Pan Film, 35mm and 4x5 size
- Pro Copy Film, 4x5 size
  - Pro 100/PRT Films, 4x5 and 120 size
  - Kodalith Sheet Film, 4x5, 8-1/2 x 11 sizes
  - Super-XX Pan Film 4142, 4x5 size

<u>Contractors</u>	<u>Percentage Off List</u>
B & H Photo Video Corp	35%
HPI International Inc	40%

B. Chemistry—Unavailable on this contract.

C. Photographic Papers

- Polycontrast Rapid II and III RC Paper:
  - All finishes, 8x10, 250/box and 100/box
  - 5x7, 500/box
  - "N" Finish, 10x10
- Polycontrast Rapid III RC Paper, MWF, 5x7, 8x10, 11x14, 100/box
  - Kodabrome RC Paper, 8x10
  - Kodabromide F-4, and F-5 Paper
  - Ektacolor Plus Paper, "F" Finish, 8x10
  - Ektachrome 22 Paper, "F" Finish, 8 x 10

<u>Contractors</u>	<u>Percentage Off List</u>
B & H Photo Video Corp	30%

D. Graphic Arts Supplies-Unavailable on this contract.

E. Mailers

- 24x36 exp. Mailers, Slide and Print

<u>Contractors</u>	<u>Percentage Off List</u>
B & H Photo Video Corp	35%

### 10.2 Polaroid Products

- Polacolor ER Type 669 Film, pack and case lots
- 4x5 Sheet Films, 50 Series, including
  - Type 55 B/W Positive and Negative Film
  - Type 57 B/W High Speed Print Film
- 8x10 Sheet Films, 800 Series
- Time Zero Supercolor SX-70 Film

## PHOTOGRAPHIC SUPPLIES

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-600 High Speed Color Film

<u>Contractors</u>	<u>Percentage Off List</u>
B & H Photo Video Corp	42%
HPI International Inc	50%

### 10.3 Fuji Products

- Fujicolor 35mm, 24 and 36 exp., ASA-100/200/400
- Fujichrome 50-D Prof. RFP Reversal Film, 35mm, 100' rolls
- Fujichrome 50/100/400, 35mm, 24 and 36 exp.
- Fujichrome 50 and 100, 4x5 sheets and 120 rolls
- Fujichrome 100-D Professional RDP Slide Film
- Fujichrome Duplicating Film, CDU Tungsten, 35mm, 100' rolls

<u>Contractors</u>	<u>Percentage Off List</u>
B & H Photo Video Corp	40%
HPI International Inc	36%

### 10.4 AGFA Products

- Brovira and Portriga Papers, Med. Wt, 8x10 and 11x14
- GRP7 Rapid Processing Developer, 5 gallon cube
- G377 Rapid Fixer, 5 gallon cube
- CP297B Universal Developer, 2-1/2 gallon cube,
- Rapid Access Film - Litex, 10"x12", 11"x14"
- CPN & NPC & CPC Papers, 8-1/2" x 11", 10"x12", 11"x 14"
- CPP & CPPab & CPF & CPFab,
  - 8-1/2" x 11"
    - CPPab=22.90/CPP
    - CPF=70.15
    - CPFab=41.26
  - 10" x 12"
    - CPPab=29.05/CPP
    - CPF=89.59
    - CPFab=54.18
  - 11" x 14"
    - CPPab=33.03/CPP
    - CPF=155.47
    - CPFab=68.31

<u>Contractors</u>	<u>Percentage Off List</u>
B & H Photo Video Corp	30%

### 10.5 Ilford Products

- Pan F Film, 100' bulk
- HP-5 Film, 100' bulk
- Ilfospeed Multigrade II and III paper, 1M Glossy and Pearl Finishes,

## PHOTOGRAPHIC SUPPLIES

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Medium Wt., DW, 8x10, 11x14, 100/box  
-Ilfospeed RC Paper, Selective Contrast, Grades 2-5, 8x10, 11x14

<u>Contractors</u>	<u>Percentage Off List</u>
B & H Photo Video Corp	15%
HPI International Inc	36%

10.6 Photographers' Formulary Products—Unavailable on this contract

10.7 Gepe Products

-2x2 Glassless Slide Mounts, 100/box

<u>Contractors</u>	<u>Percentage Off List</u>
B & H Photo Video Corp	25%

10.8 Vue-All Products

-Negative Transparency Holders for 35mm (no PVC), 6-Frame, size 6-B

<u>Contractors</u>	<u>Percentage Off List</u>
B & H Photo Video Corp	25%

10.9 Ethol Products-Unavailable on this contract.

10.10 Heico Products-Unavailable on this contract.